

## REMARKS

The last Office Action of January 11, 2005 has been carefully considered. Reconsideration of the instant application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-24 are pending in the application. Claims 1, 2, 10, 13, 14, 16, 18, have been amended. No claim has been canceled. Claim 25 has been added. A total of 25 claims are now on file. The Commissioner is authorized to charge the claim surcharge of \$25.00 to Deposit Account No: 06-0502. Amendments to the specification have been made. Fig. 3 has been amended, and a new drawing sheet is submitted and labeled "Replacement Sheet".

It is noted that claims 10, 14, 16, and 18 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-16 and 22-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,464,074 to Dimbath in view of U.S. Pat. No. 4,427,113 to Wanner.

Claims 17-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Dimbath in view of Wanner, and further in view of U.S. Pat. No. 5,219,075 to White.

## **AMENDMENTS TO THE DRAWINGS WITHOUT MARKINGS**

### **IN THE DRAWING:**

Fig. 3 has been amended.

**REJECTION OF CLAIMS 10, 14, 16, 18 UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

Applicant has amended claims 10, 14, 16, and 18 to address the §112 rejection. These changes are self-explanatory and cosmetic in nature and should not be considered as a narrowing amendment to trigger prosecution history estoppel.

Withdrawal of the rejection of the claims 10, 14, 16, and 18 under 35 U.S.C. §112, second paragraph is thus respectfully requested.

**REJECTION OF CLAIMS 1-24 UNDER 35 U.S.C. §103(a)**

Applicant has amended claim 1 by setting forth that the stiffening frame is constructed in such a way as not to project into the bell of the brass instrument. In addition, applicant submits herewith a new claim 25 which positively sets forth the combination of a carrying bag according to claim 1 and a brass instrument.

The Dimbath reference describes a carrying bag of flexible material. Dimbath is silent as to the provision of a stiffening frame.

The Wanner reference describes an instrument case having a lid (24) which includes a body portion (28) and a cover portion (30). As stated in col. 4, lines 19 to 22, "[T]he body portion 28 is tapered and contoured so that it may reside substantially within the bell B of the trombone T.". This is also clearly indicated in Fig. 2. In contrast thereto, claim 1, now on file, clearly sets forth that

the stiffening frame does not project into the bell. As a consequence of the Wanner configuration of the body portion (28), the lid (24) must be removed in order to allow placement of the instrument in the case. This is cumbersome and in addition, the Wanner case is comparatively heavy. In contrast thereto, the stiffening frame of the instant specification not only stiffens the front end portion of the instrument case, but does not substantially add to the weight.

In addition, it is applicant's contention that Wanner, in fact, fails to disclose a frame but merely describes the provision of an insert. The term "frame" implies a structure that is open for admitting, enclosing, supporting something, see e. g. Webster's Third New International Dictionary, 1986, page 902 (copy enclosed). Neither the lid (24) nor the body portion (28) in Wanner appear to be an open structure.

In order to be clear, applicant has amended Fig. 3 to label the opening of the stiffening frame by reference numeral "13". The specification has been amended accordingly (see paragraph [0026]).

It is also applicant's contention that a combination of Dimbath and Wanner would not produce the present invention because Dimbath's case would have to be modified with a detachable lid having a tapered and contoured body portion to fill the space inside the bell. This is not what the inventor of the instant application contemplated and this is not the invention for which protection is sought.

For the reasons set forth above, it is applicant's contention that neither Dimbath nor Wanner, nor a combination thereof teaches or suggests the features of the present invention, as recited in claim 1.

As for the rejection of the retained dependent claims, these claims depend on claim 1, share its presumably allowable features, and therefore it is respectfully submitted that these claims should also be allowed.

It should, however, be noted that these dependent claims contain individual patentable features per se. In this connection, applicant wishes to refer e.g. to claim 13 which sets forth the particular configuration of the stiffening frame including the reference to an opening, (here, e.g. a central opening) to indicate the presence of a "frame" and the feature that the rim portion encircles the bell on the outside. In this way, the bell is protected. Please note again, that the body portion (28) provides no outside protection, as it is received inside the bell.

Applicant further wishes to refer to claim 23 which has been rejected by the Examiner by the general statement that no new and unexpected result can be ascertained. Applicant respectfully disagrees. The inclined end disposition of the end portion provides for an improved stability.

Withdrawal of the rejection of claims 1-24 under 35 U.S.C. §103(a) and allowance of claims 1-25 are thus respectfully requested.

#### **CLARIFICATION AMENDMENT**

Applicant has amended the specification to correct obvious grammatical

and/or typographic errors. These changes are self-explanatory and do not contain any new matter.

## **CITED REFERENCES**

Applicant has also carefully scrutinized the further cited prior art and finds it without any relevance to the newly submitted claims. It is thus felt that no specific discussion thereof is necessary.

## **CONCLUSION**

Applicant believes that when reconsidering the claims in the light of the above comments, the Examiner will agree that the invention is in no way properly met or anticipated or even suggested by any of the references however they are considered.

In view of the above presented remarks and amendments, it is respectfully submitted that all claims on file should be considered patentably differentiated over the art and should be allowed.

Applicant further submits a certified copy of the priority document under 35 U.S.C. §119(a)-(d).

Reconsideration and allowance of the present application are respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

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fran-chise-ment \-mənt, -chəzm- sometimes -ən-  
fra(a)n'chi- \-n s [MLFr. *franchissement*, fr.  
+ *menir*]: ENFRANCHISEMENT  
fran-chiser \-chəzə(r)-, -raan- sometimes -sə-  
[*franchiser*]: to enfranchise  
tabloid \-ləb-oid-: designed to keep carbonated beverage packs  
their ~s abreast of news in the canned soft-drink  
—Modern Packaging)  
franchise stamp *n*: a postage stamp issued by some  
for use on free mail (as that of a charitable institution)  
franchise tax *n*: a business tax imposed upon various  
businesses granted a franchise  
fran-cis \-fran(t)sik- *adj*, *usu cap* [ML *Franciscus*,  
Francus Franck + *-icus* -ic = more at FRANK]:  
fran-cien \-fran'syən- *n* *usu cap* [fr. *fran-cien*,  
fran-çien]: the dialect of French used in the middle  
Franco-Provençal that furnishes the basis for the literary  
official form of the modern French language  
fran-cis-can \-(')fran'siskən-, -raan- *adj*, *usu cap* [*fran-*  
*ciscus* (St. Francis of Assisi) 11226 Ital. monk & preach-  
-an]: of or relating to St. Francis of Assisi, to the Order  
Franciscan, or to the Franciscans  
franciscan \-n- *n* *usu cap*: a member of one of the  
religious foundations established by St. Francis of  
the early 13th century including the Friars Minor, the  
Clares, and the Franciscan tertiaries  
fran-cis-can-ism \-'kən,izəm- *n* *s often cap*: Fran-  
ciscan beliefs or practices  
fran-cis-cum \-fran(t)səm- *n* *s* [NL, fr. *France* + *-cum*]:  
a radioactive element of the alkali-metal group dis-  
covered in 1945; a disintegration product of actinium and obtained  
by the bombardment of thorium with protons — *see*  
*see ACTINIUM SERIES, ELEMENT table*  
franck-con-don principle \-fran'k-kəndən-, -rən-  
F&C [after James Franck 1964 Am. physicist &  
Germany and Edward U. Condon 1902 Am. physicist]:  
principle in spectroscopy: the intensities of molecular  
bands due to electronic transitions are consistently  
assumption that the relatively large mass of the atoms  
in the molecule prevents appreciable change in their  
positions during such transitions  
frank-e-ite \-frā'ŋk,ə,īt- *n* *s* [G *frank-eit*, fr. (C.  
Ernest Francke, 19th cent. Ger. mining engineers + *-ite*;  
a mineral consisting of a dark gray or black mass  
antimony tin sulfide (sp. gr. 5.55)  
fran-co \-frā'ŋ(k)ə- *adj* [It (*porto*) *franco* free *cap*,  
*porto* carriage + *franco* free, fr. ML *francus* — more at  
free; free of charge: FRANKED: a: postage free b: dis-  
free  
franco- *comb form*, *usu cap* [ML, fr. *Francus* French  
LL *Frank* — more at FRANK]: French and (*Francia*)  
Franco- (Francia)  
fran-co-ism \-frā'ŋk,ə,izəm-, -rən- *n* *s* *usu cap* [E  
Franco 1892 Span. soldier and dictator of Spain]:  
1: the political or social policies advocated or put  
by the dictator Franco 2: the advocacy of or alleg-  
Franco's policies  
fran-cois pre-mier \-frā'ŋswə-prə'myər- *n*, *usu cap*:  
after *Francois premier* (Francis I) 1547 king of France  
furniture style modeled on that of the Italian Renaissance  
and introduced into France under Francis I  
fran-co-ist \-frā'ŋk,ə,ist-, -rən- *n* *s* *usu cap* [Francis  
+ *-ist*]: 1: a member of General Franco's forces in  
Spanish civil war 2: an advocate of or adherent to  
fran-co-lin \-frā'ŋkələn-, -kəl- *n* *s* [F, fr. OE  
*francolinus*]: any of numerous partridges of southern  
Africa constituting *Francolinus* and related genera  
BLACK PARTRIDGE  
fran-co-ni-an \-(')frā'ŋk,ə'nēən-, -ən-, -nyən- *adj*:  
[*Francia*, former duchy of Germany + *-an* + *E -an*]:  
relating to Francconia or the Franconian dialects  
franco- *n* *s* *cap*: the West Germanic language  
2: Franks esp. as represented by a group of dialects, partly  
German and partly High German, attested by written  
documents of which the earliest belong to the late 8th or  
century over an area extending from the lower part of  
Rhine as far south as the northern border of Alsace and  
east as the region around Bamberg in northern Bavaria  
continuing in oral use to the present day — compare  
LOW FRANCONIAN  
fran-co-nia po-la-toes \-nēə-, -nyə- *n* pl, *usu cap* [*Francia*,  
cooked with roast and often baked with the drippings  
fran-co-phil \-frā'ŋk,ə,fil-, -kə- or fran-co-phīl-  
-*adj*, *usu cap* [Franco- + *-phil*, *-phil* (adj. comb. form)]:  
friendly or attracted toward France or French cus-  
toms  
franco-phil \-(') or franco-phīl \-n *s* *usu cap* [*Francia*,  
*-phil*, *-phil* (n. comb. form)]: a Francophile person  
fran-co-phīl-la \-(')fīl-ēə-, -līə- *n* *s* *usu cap* [NL, fr. *Francia*,  
*-phīl*]: the quality or state of being Francophile  
fran-co-pho-be \-(')fōb-, -bē- *adj*, *usu cap* [Franco- +  
(adj. comb. form)]:  
France or French culture or customs  
fran-co-pho-bia \-(')fōb-ēə- *n* *s* *usu cap* [Franco- + *-phobē* (n.  
form)]: a Francophobe person  
fran-co-pho-bia \-(')fōb-ēə- *n* *s* *usu cap* [NL, fr. *Francia*,  
*-phobia*]: the quality or state of being Francophobe  
fran-co-pro-vençal \-frā'ŋ(k)ə- *adj*, *usu cap* [*Francia*,  
+ *Provençal*; trans. of It *franco-provenzale*]: of  
to, or constituting Franco-Provençal  
fran-co-pro-vençal \-n *cap*, *cap* F&C: a group of southern  
French dialects spoken in western Switzerland and in  
cent parts of France bordering on the Provençal dialect  
fran-co-tir-er \-frā'ŋk,ə,ter-, +V-ər- *n* *s* [F, fr. *franco*,  
more at FRANK]: a civilian esp. French guerrilla  
sniper  
FR and CO *abbr* free of riot and civil commotion  
fran-gi-bil-i-ty \-frā'ŋjə-bil-ē- *n* *s*: the quality of  
being frangible  
fran-gi-ble \-frā'ŋjə-bəl- *adj* [ME, fr. MF & ML; ML  
*frangibilis*, fr. L *frangere* to break + *-ibilis* -ible =  
BREAK]: capable of being broken ~ BREAKABLE  
FRAGILE (a fire-extinguishing fluid in a ~ container)  
ladies' dainty and slender blades must not be con-  
sidered a deplorable event — Elinor Wylie — *fran-gi-ble*  
frangible bullet *n*: a bullet used in firing practice that  
into powder or fragments upon contact with the target  
does not penetrate  
fran-gi-pan-e \-frā'ŋjə,pān-, -raan-, frā'zhēpən- *n* *s* [*Francia*,  
F, fr. It *frangipane*, a kind of perfume or *frangipane* or *frangipane*  
gloves, after the Marquis Muzio Frangipane or Frangipane  
cent. Ital. nobleman] 1: FRANGIPANE or jasmine perfume  
mond cream flavored with almonds and used as a base  
custard cream flavored with almonds and used as a base  
fran-gi-pan-i \-frā'ŋjə,pān- *n* *s* *usu cap* [*Francia*,  
frangipani or frangipanis also *frangipani* *frangipani* *frangipani*  
[modif. of F & It *frangipane*] 1: a perfume derived  
imitating the odor of the flower of the red jasmine tree  
various tropical American shrubs or small trees of the  
*Plumeria* (as red jasmine)  
fran-gu-la \-frā'ŋg(y)ə-lə- *n* *s* [NL, fr. L *frangere* to  
-ula; fr. the fragrability of the wood] 1: ALDER BARK  
2: the bark of *frangula* used in medicine for its laxa-  
tives